Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-1276

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

CITY OF WILMINGTON,
Petitioner

v.

WILMINGTON STEVEDORES, INC.,
Respondent

BRIEF FOR RESPONDENT OPPOSING PETITION FOR A WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Should this Court review the decision of the United States Court of Appeals for the Third Circuit involving a fact-based application of Delaware statutory law where the decision does not conflict with any federal law or any decision of another federal court of appeals?

2. Should this Court review the decision of the United States District Court for the Eastern District of Pennsylvania on an issue when that issue was neither raised on appeal to the United States Court of Appeals for the Third Circuit, resolved by the Court of Appeals nor fully addressed by the parties?

TABLE OF CONTENTS

	Page
COUNTER-STATEMENT OF QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
REASONS FOR DENYING THE WRIT	1
I. AS TO THE RULING THAT AN EXPOSURE TO CONTRIBUTION REMAINS DESPITE COMPENSATION PAYMENTS: REVIEW IS NOT REQUIRED BECAUSE THE DECISION RENDERED BY THE COURT OF APPEALS FOR THE THIRD CIRCUIT DID NOT REQUIRE RESOLUTION OF A FEDERAL QUESTION AND DOES NOT CONFLICT WITH ANY OTHER DECISION OF A FEDERAL COURT OF APPEALS	1
II. AS TO THE RULING THAT AN EXPOSURE TO INDEMNIFICATION REMAINS, UNDER *SIERACKI-RYAN*, DESPITE THE 1972 AMENDMENTS TO THE LHWCA: REVIEW IS INAPPROPRIATE BECAUSE THE ISSUE WAS NOT RAISED BEFORE OR RESOLVED BY THE COURT OF APPEALS	3
CONCLUSION	4

TABLE OF AUTHORITIES

CASES: Page

Arvidson v. Dillingham Corp., 462 F.2d 1 (9th Cir. 1972), *cert. denied*, 409 U.S. 983 (1972) 2

Moragne v. States Marine Lines, 398 U.S. 375 (1970) 2

Murphy v. Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, 545 F.2d 235 (1st Cir. 1976) 2

Pastore v. Taiyo Gyogyo, K.K., 571 F.2d 777 (3d Cir. 1978) 2

Thibodaux v. Atlantic Richfield Co., 580 F.2d 841 (5th Cir. 1978), *cert. denied*, 422 U.S. 909 (1979) 2

Youakim v. Miller, 425 U.S. 231 (1976) 3

STATUTES:

19 Delaware Code §2301 *et seq*..... 2

19 Delaware Code §2310 2

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The respondent, Wilmington Stevedores, Inc., respectfully prays that a writ of certiorari not issue to review the judgment of the United States Court of Appeals for the Third Circuit rendered in this proceeding on September 17, 1986 for the reasons set forth below.

REASONS FOR DENYING THE WRIT

I. THE CONTRIBUTION RULING

Contrary to petitioner's contention, the decision of the United States Court of Appeals for the Third Circuit regarding the issue of contribution presented in this case is not predicated upon resolution of a federal question

and does not conflict with any decision of a federal court of appeals. In fact, the Third Circuit opinion specifically distinguishes this case and demonstrates that no such conflict exists.

The heart of the Third Circuit opinion is that Wilmington Stevedores, Inc. ("Stevedore") had a claim for contribution against the City of Wilmington ("City") because the specific language contained in the Delaware Workman's Compensation Act allowed for it. 19 Del. C. §2301 *et seq.* More particularly, the Third Circuit found that the Delaware Workmen's Compensation Act "expressly stipulates that its provisions do not apply to maritime workers who were 'injured or killed while engaged in interstate or foreign commerce, or to their employers, whenever the laws of the United States provide for compensation or for liability for such injury or death.' " (Pet. for Cert. A-11). The Third Circuit recognized that the federal maritime common law, under the principles of *Moragne v. States Marine Lines*, 398 U.S. 375 (1970), did impose "liability for such injury or death", and, accordingly that "Delaware's statute, by its own terms, is not applicable in the circumstances currently before this court". (Pet. for Cert. A-11).

Furthermore, in response to the City's petition for panel rehearing on the issue, the Third Circuit specifically held that its earlier opinion "holds only that Delaware, by virtue of 19 Del. C. §2310, has elected not to confer its workmen's compensation benefits on workers 'injured or killed while engaged in interstate or foreign commerce . . . whenever the laws of the United States provide for compensation or for liability for such injury or death.' " (Pet. for Cert. A17-A18) (emphasis omitted). Clearly, the Third Circuit has unequivocally held that its decision rests upon the specific language and application of the Delaware statute to the particular facts of this case.

The cases which petitioner cites to support its contention that there is a split among the circuits on this

particular issue are inapposite in that, unlike the Delaware statute, the language of the workman's compensation statutes involved in those cases conflicted with the federal maritime law. For example, in its opinion sur denial of the City's petition for panel rehearing, the Third Circuit itself distinguished its decision in *Pastore v. Taiyo Gyogyo, K.K.*, 571 F.2d 777 (3d Cir. 1978), noting that, unlike the Delaware statute, the "exclusivity provision of the Pennsylvania statute was applicable on its face." (Pet. for Cert. A-17). The decisions rendered in *Arvidson v. Dillingham Corp.*, 462 F.2d 1 (9th Cir. 1972), *cert. denied*, 409 U.S. 983 (1972), *Murphy v. Woods Hole, Martha's Vineyard and Nantucket Steamship Authority*, 545 F.2d 235 (1st Cir. 1976) and *Thibodaux v. Atlantic Richfield Co.*, 580 F. 2d 841 (5th Cir. 1978), *cert. denied*, 442 U.S. 909 (1979) are similarly and equally distinguishable.

Thus, in conclusion, there is neither a federal question, a conflict in the circuits, nor any significant reason or particular national policy which requires this Court to review the judgment rendered by the Third Circuit in this action.

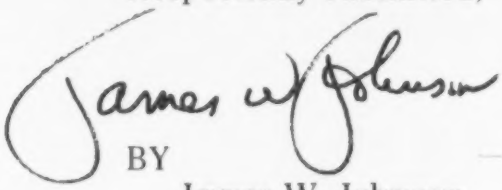
II. THE INDEMNIFICATION RULING

The City now, for the first time after the decision of the District Court, questions the District Court's indemnification ruling. This issue was neither raised on appeal to the Third Circuit, nor resolved by it and certainly was not fully addressed by the parties. The general rule is that this Court "does not decide questions not raised or resolved in the lower court." *Youakim v. Miller*, 425 U.S. 231, 234 (1976). While the foregoing rule is not "inflexible", exceptional circumstances are required in order for this Court to take that exception. *Id.* The petitioner has completely failed to justify such an exception. Therefore, this issue should not be the subject of review by this Court.

CONCLUSION

For the reasons set forth above, a writ of certiorari should not issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,



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